

AMENDMENTS TO THE DRAWINGS:

Subject to the approval of the Examiner, please replace the drawing sheet containing Figs. 1 and 2 in this application with the one (1) replacement drawing sheet filed herewith (labeled "Replacement Sheet" and containing Figs. 1 and 2). The replacement drawing addresses a minor error in Fig. 2. The changes to the drawing are discussed in the **Remarks** below.

Attachment: Replacement Drawing Sheet (1 sheet, Figs. 1 and 2).

REMARKS

By this Amendment After Final, Applicants propose amending claims 1-3, 6-10, 13-16, and 19, adding new claims 20 and 21, and amending Fig. 2. Claims 1-21 are pending in this application, upon entry of this Amendment.

In the final Office Action of October 18, 2005,¹ claims 1-19 were rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,782,198 ("*Liu*"). Applicants address this rejection, as well as the new claims, drawings, and attached Form PTO-1449, below.

Regarding the Information Disclosure Statement of December 19, 2003

In the Amendment filed July 25, 2005, Applicants noted that the Examiner did not return a copy of the Form PTO-1449, submitted with the Information Disclosure Statement of December 19, 2003, indicating that the listed documents were considered. With the July 25 Amendment, Applicants included a courtesy copy of the Form PTO-1449 and requested that the Examiner consider the listed documents and return the form with appropriate notations indicating such consideration. Applicants have not yet received a copy of the Form PTO-1449 indicating that the listed documents were considered. With this paper, Applicants again include a copy of the Form PTO-1449 and request that the Examiner consider the listed documents and indicate such consideration by returning the form with appropriate notations.

Regarding Fig. 2

By this Amendment After Final, Applicants propose to amend Fig. 2 to correct a minor error. Specifically, Applicants propose to amend Fig. 2 so that the "IP router" in element 2 is labeled as element 8 and the "Optical path manager" in element 2 is labeled as element 10.

¹ The final Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether or not any such statement is identified herein, Applicants declines to automatically subscribe to any statement or characterization in the final Office Action.

Applicants submit herewith a replacement drawing sheet (containing Figs. 1 and 2) to effect this change. In the replacement drawing, the “IP router” and “Optical path manager” in element 2 are labeled as element 8 and element 10, respectively. Applicants submit that no new matter has been added.

Section 102(e) Rejection of Claims 1-19

Applicants traverse the § 102(e) rejection of claims 1-19 because *Liu* fails to anticipate the claims. In order to properly anticipate Applicants’ claimed invention under 35 U.S.C. § 102, a single prior art reference must disclose each and every element of the claim at issue, either expressly or under principles of inherency. Further, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” *See* M.P.E.P. § 2131. Also, “[t]he elements must be arranged as required by the claim.” *Id.* In this case, *Liu* fails to anticipate claims 1-19 because the reference fails to teach each and every element of the claims.

With regard to independent claim 1, *Liu* fails to teach at least the following element:

an optical path manager coupled to the plurality of nodes via a transmission line, the optical path manager comprising a communication interface which transfers information between an IP router or another device and an operator, an optical path control section, a structure control table, an optical path control table, and an optical path shared table, said optical path control section controlling settings of optical paths among the plurality of nodes in accordance with information transferred via the communication interface.

Liu is directed to “[r]ecovery from link failure in a WDM [wavelength division multiplexing] ring network.” Abstract. In rejecting claim 1, the Examiner noted *Liu*’s disclosure regarding a “demand identification apparatus 142,” a “channel identification apparatus 146” and “optical add-drop mechanisms . . . 210 and 220.” *See* Office Action at 2; *Liu*: col. 4, lines 13-40; col. 5, lines 21-56; Figs. 5, 6. The Examiner also noted *Liu*’s “link 105,” which, as shown in Fig. 6, “includes a link failure detector 230.” *See* Office Action at 2; *Liu*: col. 7, lines 16-21; Fig. 6.

Neither these cited portions, nor any other portions of *Liu*, teach an “optical path manager,” as recited in claim 1, as explained further below.

Liu’s “demand identification apparatus 142” does not constitute an “optical path manager,” as recited in claim 1. According to *Liu*, “each node 110 includes demand identification apparatus 142 . . . for identifying the pair sending node 110 address and receiving node 110 address with a unique wavelength.” *Liu*: Col. 4, lines 13-18; Fig. 5. To begin with, apparatus included in each of the optical nodes, as disclosed by *Liu*, do not constitute “an optical path manager coupled to the plurality of nodes via a transmission line,” as recited in claim 1. Furthermore, apparatus included in each of the nodes for identifying sending and receiving addresses and wavelengths do not constitute “an optical path manager coupled to the plurality of nodes via a transmission line,” which comprises “a communication interface which transfers information between an IP router or another device and an operator, an optical path control section, a structure control table, an optical path control table, and an optical path shared table, said optical path control section controlling settings of optical paths among the plurality of nodes in accordance with information transferred via the communication interface,” as claimed.

Further, *Liu*’s disclosure regarding the “channel identification apparatus 146,” does not teach the “optical path manager” of claim 1. *Liu*’s “channel identification apparatus 146” merely refers to information regarding “identification between ordered pairs of sending nodes 110 and receiving nodes 110 and channels.” Col. 4, lines 31-40. This component in *Liu*’s system does not teach the “optical path manager” or any of its sub-elements recited in claim 1.

Likewise, *Liu*’s “optical add-drop mechanisms . . . 210 and 220” do not teach the claimed “optical path manager.” The Examiner alleged that *Liu*’s mechanism 210 constitutes a “communication interface which transfers information between another device” Office

Action at 2. That allegation in the Office Action does not support a rejection of claim 1 under § 102 based on *Liu*. Claim 1 recites an “optical path manager” comprising, *inter alia*, a “communication interface which transfers information between an IP router or another device and an operator.” *Liu* does not disclose these features, and the Examiner has not demonstrated the contrary. Indeed, *Liu*’s “optical add-drop mechanisms . . . 210 and 220” merely add signals to and drop signals from various networks. Col. 5, lines 40-50.

Moreover, *Liu*’s disclosure that “every link 105 in the network 150 includes a link failure detector 230,” which “produces a link failure signal S_F responsive to each signal S_L that enters the link 105,” does not teach the claimed “optical path manager.” Col. 7, lines 16-21. The Examiner alleged that *Liu*’s link 105 in Fig. 6 constitutes “an optical path control section.” Office Action at 2. That allegation in the Office Action does not support a rejection of claim 1 under § 102 based on *Liu*. Claim 1 recites an “optical path manager” comprising, *inter alia*, an “optical path control section” that “[controls] settings of optical paths among the plurality of nodes in accordance with information transferred via the communication interface.” *Liu*’s link 105, although including a detector 230, does not “[control] settings of optical paths among the plurality of nodes in accordance with information transferred via the communication interface,” as claimed.

Applicants remind the Examiner that a rejection under § 102 is proper only when the claimed subject matter is identically described or disclosed in the prior art. *In re Arkley*, 455 F.2d 586, 587, 172 USPQ 524, 526 (CCPA 1972). As noted above, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” M.P.E.P. § 2131.

In this case, *Liu* does not identically describe the subject matter of claim 1 “in as complete detail as is contained in the . . . claim.” Furthermore, even if all of the elements of

independent claim 1 could be found in various teachings of *Liu* – Applicants disputing that contention – the reference does not clearly and unequivocally disclose the claimed invention or direct those skilled in the art to the claimed invention “without any need for picking, choosing, and combining various disclosures.” *In re Arkley*, 455 F.2d 586, 587, 172 USPQ 524, 526 (CCPA 1972) (emphasis added).

Because *Liu* does not teach each and every element of claim 1, as a matter of law, it cannot anticipate that claim. As such, the rejection of claim 1 under 35 U.S.C. §102(e) based on *Liu* should be withdrawn.

Independent claims 2, 3, 6-10, 13-16, and 19 although of different scope than claim 1 (and from each other), include elements similar to those of claim 1 noted above. For at least reasons similar to those presented above in connection with claim 1, claims 2, 3, 6-10, 13-16, and 19 are distinguishable from *Liu*. Claims 4 and 5 depend upon independent claim 3; claims 11 and 12 depend upon claim 10; claim 17 depends upon claim 14; and claim 18 depends upon claim 16. Claims 4, 5, 11, 12, 17, and 18 require all of the features of base claims 3, 10, 14, and 16, respectively, and therefore are similarly distinguishable from *Liu*. Accordingly, the § 102(e) rejection of claims 2-19 should therefore be withdrawn. Applicants thus request withdrawal of the § 102(e) rejection and the timely allowance of pending claims 1-19.

New claims 20 and 21

Each of new dependent claims 20 and 21 requires all of the features of claim 1 and is therefore similarly distinguishable from the applied art. Applicants further submit that the applied art fails to teach or suggest the additional features of new claims 20 and 21. Applicants therefore request the timely allowance of new claims 20 and 21.

Conclusion

Applicants request that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner. The proposed amendments to claims 1-3, 6-10, 13-16, and 19, amendments to Fig. 2, and new claims 20 and 21 should not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner. This Amendment should therefore allow for immediate action by the Examiner.

Applicants point out that the final action by the Examiner presented some new arguments as to the application of the art against Applicants' invention. Entry of this Amendment would allow Applicants to reply to the final rejection and place the application in condition for allowance, or in better form for appeal, should the Examiner continue to dispute the patentability of the pending claims.

Applicants request the entry of this Amendment, the Examiner's reconsideration of the application, and the timely allowance of claims 1-21.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

Dated: February 21, 2006

By: 

Richard V. Burgujian
Reg. No. 31,744

Attachments: (1) Copy of Form PTO-1449 submitted with IDS of December 19, 2003; and
(2) Replacement drawing sheet (1).